

STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

Report to Planning Applications Committee

13th July 2023

TITLE:	TPO/2023/0013 - Application to fell protected trees at Clay Lake, Endon
PORTFOLIOS:	(i) Deputy Leader, Regeneration & Planning (ii) Climate Change & Environment
OFFICER:	Steve Massey, Arboricultural Officer
WARD:	Brown Edge and Endon

Appendices Attached –

Appendix A: Application Site Location Plan

Appendix B: Tree Position Plan

1. Recommendation

- 1.1 That consent be GRANTED to fell six mature trees protected within Group G3 under Tree Preservation Order (TPO) No. LR.6, and to fell one mature tree and remove the crown from an early-mature tree both protected within Woodland W2 of TPO LR.6, subject to the conditions set out in this report:

2. Application Summary and Background

- 2.1 This application seeks consent to fell six mature Beech trees (denoted T24 to T29 inclusive in the application documents) protected within Group G3 under TPO No. LR.6, and to fell one mature Oak and remove the crown from one early-mature Oak (denoted T32 and T35 respectively in the application documents) protected within Woodland W2 under TPO No. LR.6. The trees are situated along the highway frontage to a field and woodland on the south-west side of Clay Lake, Endon, forming part of the holding of Woodhouse Green Farm. The site is indicated on the Location Plan at Appendix A, and the positions of the trees in question is shown on the photo plan at Appendix B. The applicant is the owner, Mr Blood.
- 2.2 In January 2023, a very large mature Beech (also part of Group G3) situated at the highway boundary of the application site tree failed at its base and fell across Clay Lake. Luckily no-one was injured and no significant damage to property was caused, but the outcome could potentially have been catastrophic.

- 2.3 As a result of this event, the owner commissioned a tree safety survey and arboricultural management recommendations report for the remaining large number of trees along the site frontage, which equally have the potential to affect the highway, its users, nearby properties and occupants. That report forms the basis of this application.
- 2.4 Not all the trees inspected and for which work is recommended in the consultants' report (both at this location and land at nearby Broad Lane in the same ownership) are protected by TPO. Not all the recommended work to TPO-protected trees requires consent; some work such as removal of dead wood, and pruning to maintain highway clearance, may be carried out under statutory exemptions. In addition, removal of Ivy from protected trees is not controlled by the TPO.
- 2.5 The remaining elements of proposed work for which consent under the TPO is required are noted at Section 2.1 above, and form the application to be considered and determined by the local planning authority.
- 2.6 The technical issues relating to tree health, condition, safety and management are discussed in detail at Section 7 of this report. A summary of the application assessment and its interaction with the Council's adopted Tree Strategy policies are presented at Sections 4 and 5.

3. Consultations and Publicity

- 3.1 Although not normally a requirement for TPO applications, in this case due to the scale and extent of proposed work, and to the associated potentially significant amenity and public safety issues under consideration, consultations have been carried out.
- 3.2 Endon with Stanley Parish Council has been consulted. The Parish Council sought the views of residents and, as might be anticipated, received a mixed range of replies with many opposed to felling trees which are such a significant part of the village landscape, but many others concerned about the safety issues – particularly in the light of the recently fallen tree. The Parish Council comments that it will place trust in the District Council as planning authority to make an appropriate decision, but requests replacement with more resilient species if any felling is allowed.
- 3.3 Neighbour consultation letters were sent to properties adjacent to and opposite the application site, and site notices have been displayed. One public response has been received, acknowledging the difficult balance between amenity and safety, and questioning whether there is any alternative to felling the six mature Beech and one mature Oak.

4. Assessment of Application

Assessment	Comment	
Has sufficient information been provided to assess the application?	Yes	

Are the works proposed due to the trees' condition?	Yes	
If so what supporting information has been provided?		Arboricultural Report & Safety Survey by professional arboricultural consultants.
Are the works required due to alleged damage to property ?	No	
If so is a supporting report provided ?	N/A	
Are any of the proposed works 'exempt'?	Yes	Removal of dead wood; pruning to maintain crown clearance over the highway.
Assessment of amenity value:		Very High – large mature trees prominently located alongside a busy road making a substantial contribution to the well-wooded character of the area.
Impact of proposed works on the amenity of the area:		Major Adverse – A continuous line of notable mature trees (6 Beech) along one side of the road, with substantial canopies extending completely across the road, would be removed along a c.85m stretch of Clay Lake. This would have a very significant detrimental impact on local landscape character and amenity. The 2 Oak are part of a woodland, and their removal would not in itself have a significant impact on amenity due to their poor form and the retention of the remaining woodland trees.
Physiological health/ condition of the application trees:		Varies from fair, to declining, to very poor (6 Beech). The Oaks are suppressed and of low vigour.
Structural integrity of the application trees:		Significant harmful wood decay fungi noted as present on some of the application Beech trees, and anticipated to be currently or imminently present on others. Unbalanced and notably leaning form/structure in the case of the Oaks.
Do the proposed works accord with good arboricultural management?	Yes	The application tree work proposals are recommended by reputable and experienced professional arboricultural consultants and made in the interests of safety – principally that of the general public using the Clay Lake highway – in view of the potential targets in the event of tree failure, the very large tree size, and the identified decay and unbalanced form. Although alternative management prescriptions to the proposed felling are not considered in the consultants' report, in the case of the 6 Beech trees significant crown reduction pruning to reduce weight and risk of failure would anyway be likely to accelerate their decline and also arguably be more detrimental to amenity than felling and replacement.

		Quantified Tree Risk Assessment (QTRA – see Section 6 of this report) of the trees carried out by the Alliance arboricultural officers is largely supportive of the proposed work.
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5. Consideration of Application in Relation to SMDC Tree Strategy Policies

Tree Strategy Policy No	Assessment	Comment	
2.2.2	Is the proposed tree work adequately justified?	Yes	The applicant's arboricultural report details the actual and suspected presence of decay fungi which are known to cause tree failure; this is supported by the Alliance arboricultural officers' inspections.
2.2.4	Are the application trees ancient or veteran trees?	No	
2.2.6	Does this TPO application appear to be pre-empting a development proposal/planning application, by seeking to remove trees which may pose constraints to intended development?	No	
2.3.5	Are the application trees a risk to neighbouring properties or public land or the highway?	Yes	One large tree at this location has recently fallen across the highway; the applicant's arboricultural report identifies that further trees are at increased risk of similar failure

6. Quantified Tree Risk Assessment (QTRA)

6.1 QTRA is a methodology to inform tree safety management decisions, which aims to provide a statistically-based assessment and quantification of the Risk of Harm (RoH) associated with the potential failure of a tree or part of a tree under consideration. It deals with "what is the most likely occurrence" rather than "worst case scenario". The calculated risk of harm is evaluated against a Tolerability of Risk framework – essentially, is the level of risk considered to be acceptable taking into account whether it is imposed on others; the benefits arising from the tree(s); and whether the costs (eg environmental, amenity, risk transfer to others, financial etc) of implementing any risk reduction measures, where reasonably practicable, are justified when weighed against the benefits. QTRA is a proportionate approach which accepts that there are some risks in life and there are some risks associated with the presence of trees, but recognises that trees provide a number of desirable benefits.

6.2 QTRA calculates RoH by firstly assessing the potential targets and the likelihood of them being present at the instant a tree fails (is there property around the tree

which could be damaged, what proportion of total time is the area around the tree actually likely to be occupied by stationary people, passing traffic/pedestrians etc?). This can also take account of the likelihood of occupation during the type of weather conditions when failure is more likely. Secondly, the consequences of tree failure are assessed with respect to tree/branch size/weight. Thirdly, the probability of failure actually occurring at all within the foreseeable future (normally the next year or two in a tree safety management context) is assessed with regard to species, structure/form, condition, external influences etc. These three principal factors are each assigned into an assessed range, rather than given an absolute value, and are then combined to give a statistically expressed Risk of Harm.

- 6.3 In simple terms, and derived from UK Health and Safety Executive guidance, an annual risk of the loss of a human life of 1/1000 or greater is regarded as unacceptable (or 1/10,000 where it is imposed on others, as would be the case for trees overhanging a public highway) and at the other end of the scale an annual risk of less than 1/1,000,000 is broadly acceptable. In between these indicative thresholds, the risk may be tolerable but should be considered against whether it is as low as reasonably practicable and the costs/benefits of implementing risk reduction measures.

7. Detail/Individual tree assessments

T23 – mature Beech stump. This is the tree which recently fell across the road. The consultants' report noted the presence of fruiting bodies of the decay fungi *Kretzschmaria* and *Meripilus* on the stump, confirmed by the Council's arboricultural officers' inspection. *Kretzschmaria* is most commonly found on Beech and Lime. It causes sudden brittle fracture of the stem base; its danger is further increased by the facts that it normally has no obvious visual effect on crown condition, and whilst the fruiting bodies remain present all year round they are small and often hidden amongst leaf litter between root buttresses and can easily be overlooked unless specifically and closely inspecting for their presence. *Kretzschmaria* is known to spread along lines of similar trees via root grafting. *Meripilus* is most commonly found on Beech. It causes brittle fracture of main roots. The fruiting bodies form layers of large obvious toadstool fronds, but are only seasonally present rather than year-round and are more likely observed during late summer/early autumn because they degrade with frosts, although blackened shrivelled remnants may persist for some time. There may well be visual effects on crown condition when *Meripilus* colonisation is well advanced, with sparse foliage and dieback at outer branch-ends throughout the crown.

T24 – mature Beech. *Kretzschmaria* not noted, but likely to be present via root graft from adjacent stump T23. *Meripilus* not noted, although inspections have not been at optimal season for this and there is evident decline in crown condition. QTRA RoH 1/400 (not acceptable) to 1/4,000 (not acceptable as imposed risk, as here).

T25 – mature Beech. *Kretzschmaria* not noted, but possibly present via root graft from adjacent T24 (which may already have this fungus) and likely to be present via root graft from adjacent tree T26 (which has positive ID for *Kretzschmaria*). *Meripilus* not noted, and in fact this tree T25 has the best condition crown of all 6 application Beech trees with just a few signs of outer tip thinning in the upper crown. QTRA RoH 1/40,000, although characteristics along this line of trees suggests this may increase into the "not tolerable as an imposed risk" range within a relatively short space of time.

T26 – mature Beech. *Kretzschmaria* not noted by applicant's consultants, but found by arboricultural officers. Remnants of *Meripilus* fruiting bodies evident. Crown condition extremely poor, with 50 – 75% defoliation. QTRA RoH 1/40 to 1/400 (very clearly not acceptable).

T27 – mature Beech. *Kretzschmaria* not noted, but likely to be present via root graft from adjacent T26. *Meripilus* not noted, although inspections have not been at optimal season for this and there is some decline in crown condition with foliage becoming sparse towards the upper outer crown. QTRA RoH 1/40,000 (tolerable, but reduce risk if reasonably practicable and if costs can be justified), although characteristics along this line of trees suggests this RoH for T27 may well anyway increase into the “not tolerable as an imposed risk” range within a relatively short space of time.

T28 – mature Beech. *Kretzschmaria* not noted, but likely to be present via root graft from adjacent old stump (between T28 and T29) from a similar Beech tree removed a few years ago due to multiple decay fungi colonisation, including *Kretzschmaria* and *Meripilus*. *Meripilus* not noted, although crown condition obviously declining. QTRA RoH 1/400 (not acceptable) to 1/4,000 (not acceptable as imposed risk, as here).

T29 – mature Beech. *Kretzschmaria* not noted, but likely to be present via root graft from adjacent old stump (between T28 and T29) from a similar Beech tree removed a few years ago due to multiple decay fungi colonisation, including *Kretzschmaria* and *Meripilus*. Crown condition obviously declining. QTRA RoH 1/4,000 (not acceptable as imposed risk, as here) to 1/40,000 (tolerable, but reduce risk if reasonably practicable and if costs can be justified), although characteristics along this line of trees suggests this RoH for T29 may well anyway increase into the “not tolerable as an imposed risk” range within a relatively short space of time..

T32 – mature Oak. Suppressed by adjacent trees and extensive ivy cover. Misshapen, leaning over the road and significantly unbalanced. Some major dead wood including a broken branch hanging over the road and electric wires. Applicant's consultants assess the tree as declining. QTRA RoH 1/40,000 but with anticipated continued decline this may increase within a relatively short period.

T35 – early-mature Oak. Suppressed by adjacent trees, misshapen, leaning over the road and significantly unbalanced. QTRA RoH 1/40,000 to 1/400,000 but with anticipated continued decline this may increase within a relatively short period.

8. Discussion

8.1 The six remaining Beech trees are approaching the end of their safe useful lives and inevitably beginning to show signs of senescence, including in some cases direct evidence of colonisation by dangerous wood decay fungi, and this is also a distinct possibility in the other cases. T24, T26 and T28 clearly already carry unacceptable risk, and consent to fell these should be granted.

8.2 Although *Kretzschmaria* fruiting bodies have not been found on T25, T27 and T29 it is likely that this fungus is already present or will become so sooner or later in these 3 trees. In the meantime, all 3 show signs of decline, which may well prove to be due to *Meripilus* colonisation if inspected at a more optimal time of year for these

seasonal fruiting bodies. Their declining condition will increase their QTRA RoH and take them into the “not acceptable as an imposed risk” zone before long.

8.3 Unfortunately there are no reasonable alternative management prescriptions to felling, such as substantially reducing crown weight in attempt to reduce the likelihood of failure, as mature Beech do not respond well to heavy reduction and can be seriously weakened, and such work would be very likely to accelerate their already declining condition. In addition, major crown reductions to such prominent individual trees would itself be significantly detrimental to their amenity value.

8.4 If some of these 6 Beech were to be retained for the time being, they would be more exposed to strong winds by the removal of other mutually sheltering neighbours, and if, as is the case, they are already declining they would be less able to withstand the suddenly increased exposure. Whilst the whole line of T24 – T29 is already aligned to be in the path of the prevailing south-westerly wind, storms do not always come from this direction and it is noted that south-westerlies would take the trees towards the road.

8.5 Given the low impact on amenity which would arise from felling the 2 Oaks T32 and T35 from within the woodland, it would be difficult to justify refusal of consent when these trees are noted to be suppressed, unbalanced and declining.

8.6 In the circumstances, it should also be questioned whether it would be reasonable for the Council, through a partial refusal of consent to fell some of these trees, to require the owner to retain evidently declining trees for what is likely to be only a short further period with increasing risk and then have to arrange, and pay for, a further road closure for a second tranche of major tree work. In addition, the inconvenience to the public arising from potentially multiple separate road closures should be considered.

8.9 Finally and as noted at Section 10.5 of this report, it should be borne in mind that in the event of refusal of consent, the Council can be liable for compensation for loss or damage arising within 12 months of its decision, or of a subsequent appeal decision. Whilst this is a feature of all TPO applications, given the issues at stake and the assessed RoH in this case, officers consider that this is a liability which it would not be appropriate for the Council to take on in this instance.

8.10 In conclusion, notwithstanding the unfortunate and regrettable loss of amenity value which would arise, it is considered that the public safety issues take precedence and that consent should be granted for felling T24 to T29 inclusive, for felling T32, and for crown removal to T35, subject to conditions. It could be suggested to the applicant that as with T35, crown removal could be considered as an alternative to complete felling of T32. Replacement planting should be required by condition of consent; this can specify suitable alternative species to Beech which, whilst still providing trees of large size at maturity, can avoid the particular susceptibility of Beech to both *Kretschmaria* and *Meripilus* which are clearly prevalent on site.

9. **Conditions in the Event of Grant of Consent to Fell**

9.1 This consent is valid for a period of 2 years from the date of the decision notice.

9.2 All work shall be carried out in accordance with British Standard 3998:2010 Tree Work Recommendations.

- 9.3 Seven (7) replacement trees shall be planted along or close to the field boundary generally to correspond with the position of Group G3 as denoted under TPO No. LR.6. These shall comprise 3 Common Oak (*Quercus robur*), 2 Sweet Chestnut (*Castanea sativa*) and 2 Norway Maple (*Acer Platanoides*) or such other species as may be agreed by the local planning authority, of 'standard' form and minimum girth size 10 – 12cm at time of planting. The replacements shall be planted with support stakes before the end of the first available dormant season (November to February inclusive) following felling of the existing trees. The newly planted trees shall be properly maintained to ensure successful establishment, and shall be suitably protected from browsing and trampling by any livestock present in the field from time to time by means of tree guards or cages.

10. Implications

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| 10.1 | <u>Community Safety - (Crime and Disorder Act 1998)</u> | Nil. |
| 10.2 | <u>Employees</u> | Nil. |
| 10.3 | <u>Equalities</u> | This report has been prepared in accordance with the Council's Equal Opportunities policy. |
| 10.4 | <u>Financial</u> | Anyone suffering loss or damage arising as a consequence of the Council's decision to refuse consent, or to impose conditions when granting consent, may seek compensation from the Council; any claim must be submitted within 12 months of the application or any subsequent appeal being determined, and be in accordance with the provisions of Part 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012. |
| 10.5 | <u>Legal</u> | Nil. |
| 10.6 | <u>Sustainability</u> | Whilst allowing the felling of a number of mature trees does not itself support sustainability objectives, the genuine and significant public safety issues are considered to take precedence; however, sustainability objectives would be reflected in requiring appropriate replacement planting. |

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Background Papers

TPO No. LR.6
Application
TPO/2023/0013

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